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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/809,574 | 03/25/2004 | Jack Perlman | 9244-91494 | 7107 |
| 24628 | 7590 | 06/06/2005 | EXAMINER | |
| WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606 | | | WALSH, DANIEL I | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2876 | |

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EV

Office Action Summary

Application No.

10/809,574

Applicant(s)

PERLMAN, JACK

Examiner

Daniel I. Walsh

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Receipt is acknowledged of the Amendment received on 7 March 2005.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner is unclear as to which nutritional values are included in "all nutritional values". The claims fail to recite which specific nutritional values are included, and the Examiner is unclear on what all the nutritional values are. In order to expedite prosecution, the Examiner has interpreted "all" to include calories, protein, carbs, fat, etc. as taught by Attikiouzel for example (see abstract).

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-3, 7, 9, 10-12 15, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attikiouzel, as cited in the previous action, in view of Williams, III (US 5,704,350).

Re claim 1, Attikiouzel teaches a scale (weighing means 32), a computer having a microprocessor, one or more memory means and input means (abstract and FIG. 1), data stored in at least one of the one or more memory means including the nutritional value of the food (ROM 36), a screen for viewing the nutritional value of the food (FIG. 1), whereby when a portion of food is placed on the scale and the type of food is entered into the computer by the input means, nutritional values can be determined and displayed on the screen (see claim 1).

Attikiouzel teaches nutrient buttons 24, 24a are used to display nutrient values, and, and therefore is silent to simultaneous displaying of all nutritional values.

Williams, III teaches a microcomputer with a foodstuff database where based upon an inputted weight/amount of a food, all nutritional values are displayed (FIG. 13+ and abstract).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Attikiouzel with those of Williams, III.

One would have been motivated to do this in order to display all nutritional values, in order to allow a user to track and see nutritional values for foods they may purchase, consume, etc. in a more convenient means than having to actuate separate buttons.

Re claims 2-3, Attikiouzel teaches that the determined nutritional information is stored in one or more memory means (RAM 38), means to add the nutritional information determined for one food to information determined for another food and storing the combined information in one or more of the memory means (RAM 38 and the use of the ADD function (col 5, lines 15+)).

Re claim 7, Attikiouzel teaches a keyboard input means (FIG. 1).

Re claim 9, Attikiouzel teaches a tare function (col 4, lines 30+).

Re claim 10, Attikiouzel teaches the keyboard controls the mode of the device, as it contains at least request means 22a and nutrient level request means 24a, which controls at least one of a weighing mode and nutrient calculating and displaying mode.

Re claim 11, Attikiouzel teaches indication of carbohydrates of the food (col 2, lines 60+). Though not specifically the “bread equivalent” of food, the Examiner notes that the bread equivalent is the number of 15g bread/starch servings. Though the scale only displays the total number of carbohydrates, the Examiner notes that it would have been obvious to one of ordinary skill in the art, as a matter of design variation, to display the amount of bread servings.

Attikiouzel teaches providing warnings if excessive doses of certain nutritional amounts are measured (see page 7). Accordingly, it would have been well within the skill in the art to provide a warning to a diabetic if too many carbohydrates are consumed. The Examiner notes that as the prior art teaches warnings and the total amount of carbohydrates consumed, it would have been an obvious matter of design variation, well within the skill in the art, to provide a

bread equivalency display, for providing carbohydrate information to the diabetic user to ensure their health. Simply providing a display that outputs the total carbohydrate amount divided by fifteen is an obvious design variation that simply performs a basic mathematical division on a fetched variable/amount. Accordingly, such a limitation simply provides an automated means of calculating the bread servings (manual activity) and therefore involves only routine skill in the art.

Re claim 12, Attikiouzel teaches the displaying of calorific content, carbohydrates, protein, fat, fiber, cholesterol, sodium, and the like (col 2, lines 60+). Though Attikiouzel is silent to sugars, general calories/calories from fat, and saturated fat, the Examiner notes that such nutritional values are well known and conventional nutritional values associated with food. It would have been obvious to include such additional nutritional breakdown to provide additional health information to the user regarding the foods being weighed. Such nutritional values are well known and conventional in the art, and their inclusion is an obvious expedient.

Williams, III teaches displaying minerals, (FIG. 18), calories and fat (FIG. 22). Though Williams, III is silent to the specifics of sugars, general calories/calories from fat, and saturated fat, the Examiner notes that such nutritional measurements are well known and conventional, as being included on nutritional labels, and therefore readily knowable. Accordingly, as both Attikiouzel and Williams, III teach storing and accessing known nutritional information to provide a user with the information, it would have been obvious to include such nutritional information to inform the user of the nutritional values of the foods, such values being well known and conventional, and only would only requiring the fetching of such data that would be

stored within the scale means. Therefore, simply specifying additional nutritional data to be fetched and displayed is well within the skill in the art.

One would have been motivated to combine the teachings of Attikiouzel with those of Williams, III in order to display various known nutritional values for items, to provide information to the user.

Re claim 15, the limitations have been discussed above re claims 1, 3, and 10.

Re claim 20, the limitations have been discussed above re claim 9.

Re claim 21, the limitations have been discussed above re claim 11.

4. Claims 4-6, 13-14, and 16-18, and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attikiouzel/Williams, III, as discussed above, further in view of Gardener (GB 2 317 961).

Re claim 4, the teachings of Attikiouzel/Williams, III have been discussed above. Attikiouzel/Williams, III are silent to assigning information to a user and storing it in a memory means.

Gardener teaches a food weighing scale with nutritional calculation that includes a display and storage device (abstract). Gardener teaches that the determined nutritional information is stored in a memory means for a specific user (page 5, paragraph 3), combining determined nutritional information from two foods and storing the combined information in one or more storing means assigned to a user (see page 3, #3, #4, and claim 7).

Re claim 5, Gardener teaches nutritional information for food for more than one user can be determined and stored in memory means so that a user can retrieve his data from storage (see

claims 12+, which teach that data regarding stored food information is retrievable from memory for analysis/records).

Re claim 6, Gardener teaches that nutritional information can be added to the information of the memory/database (page 5).

Re claim 13, Attikiouzel/Williams, III is silent to move data stored in the memory means to a second device.

Re claims 13-14, Gardener teaches moving the stored data to a second device/computer attachment means (abstract).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of with those of Gardener.

One would have been motivated to do this in order to permit multiple users to use the device and have data stored for later use that can be transferred to a computer to be analyzed/printed, etc.

Re claim 16, the limitations have been discussed above re claim 4.

Re claim 17, the limitations have been discussed above re claim 5.

Re claim 18, the limitations have been discussed above re claim 6.

Re claim 22, the limitations have been discussed above re claim 12.

Re claims 23, the limitations of Attikiouzel/Williams, III have been discussed above.

Attikiouzel/Williams, III is silent to entering a code associated with the weighted food into the microprocessor using the input means and viewing the nutritional value displayed on the screen.

Gardener teaches inputting a code into the device and viewing nutritional information (page 4, last paragraph). The Examiner also notes that it is well known and conventional to enter numeric/letter codes (see GB 2 133 166 abstract).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Attikiouzel/Williams, III with those of Gardener.

One would have been motivated to do this to have a well known means of entering data that can be user friendly and efficient, and reduce error.

Re claims 24-25 and 27, the limitations have been discussed above, re claim 5.

Re claim 26, Attikiouzel teaches weighing a second portion of food, determining its nutritional value, adding it to the values of previous determined foods and displaying the summed value (col 15, lines 15+). Though silent to displaying individual values, it is obvious to display the individual values so that the user knows the nutritional content of the additional items, total, and also permits the editing of individual item amounts when necessary (also see US 2004/0118618 which teaches both total nutrition being displayed, but also being able to step through individual nutrition/point information, so that the whole process does not need to be restarted when wanting to update). Specifically, Williams, III teaches displaying individual and summed values as discussed above (FIG. 22 and FIG. 13). Additionally, Gardener teaches providing nutritional information on the food on the scale in addition to daily/weekly analysis reports (page 5, for example). Accordingly, it would have been an obvious expedient to alternatively display the summed and individual values in order for the user to view the different data formats.

5. Claims 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attikiouzel/Williams, III, as discussed above, in view of Muyal (US 2003/0168260)

The teachings of Attikiouzel/Williams, III have been discussed above.

Attikiouzel/Wiliams et al. are silent to a touch sensitive screen.

The Examiner notes that it would have been obvious to one of ordinary skill in the art to use a touch sensitive screen, as touch sensitive screens are well known in the art, and are even well known for scales (Kesselman et al. US 2004/0003947). The use of a touch screen is an obvious expedient, which provides a continuous surface that is not prone to damage by food, as in the case of keyed keyboards, which also reducing the size of the scale device and adding user convenience. Specifically, Muyal teaches a touch screen that allows to display all indications and scrolling menus for the scale (paragraph [0025]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Attikiouzel/Williams, III with those of Muyal.

One would have been motivated to do this to add to the convenience of the user, while also permitting a durable input means, and possibly reducing the size and complexity (less keys as there are scrolling menus).

Response to Arguments

6. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection. The Examiner has cited the art to Williams, III (see above) to remedy the newly added limitations regarding the simultaneous displaying of information. The Examiner does not believe that such display means of displaying data

simultaneously teaches away from the prior art, as it provided convenience (among other expected benefits). The Examiner notes that teachings of touchscreen with scales, and general teachings of touchscreens render such display devices obvious expedients for reduction of size, user convenience, resistance to dust/dirt/spilling (a sealed surface), etc. and that providing a touch screen is well within the art. Regarding calculation of bread equivalents, the Examiner notes that such a calculation is merely a manipulation of well known numbers to obtain a specific bread equivalent number, and accordingly involves only routine skill in the art, and is obvious to provide a particular type/scaled data to the user. Re claims 6 and 18 the Examiner has provided teachings of inputting data into the database/memory for storage, and also provided support for transport of information to a computer. Additionally, the Examiner notes maintains that the teachings to Gardener are valid and enabling teachings and does not believe that such art is an "invitation to experiment". The Examiner maintains that to one of ordinary skill in the art, the modification and teachings of Gardener as set forth in the art are obvious.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Mano (JP405231915), Endo (JP361193027), and Nishizaki (JP363103921) which teach electronic scales and display means for information.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached between the hours of 7:30am to 4:00pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone numbers for this Group is (703) 308-7722, (703) 308-7724, or (703) 308-7382.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to **[daniel.walsh@uspto.gov]**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set for the in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

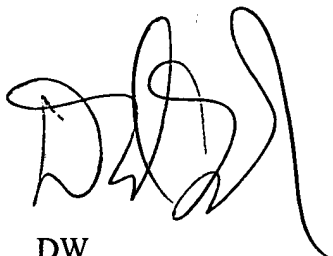
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D. Walsh

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

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DW
5-15-05

A handwritten signature in black ink, appearing to be 'Karl D. Frech' with a large, stylized flourish extending from the right side.

KARL D. FRECH
PRIMARY EXAMINER